THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO.

WRIT APPEAL No.1468 of 2005.

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JUDGMENT: (Per Hon'ble Mr Justice B.Prakash Rao)

Heard Mr.K.Srinivasa Murthy, learned counsel appearing for the appellant and Mr.Ashok Kumar, learned Government Pleader for Labour and at their request, the main appeal itself is taken up for disposal.

The appellant is the Management of Hindustan Aeronautics Limited, which assails the order of dismissal passed in W.P.Nos.13696 of 1994 & 1746 of 1995. The above writ petitions were filed by the appellant, seeking to assail the award in I.D.No6 of 1993(Old I.D.No.6/83), dated 15-11-1993, passed by the 1st respondent herein.

Few facts, which are necessary for disposal of this appeal, are that the respondent No.2 (workman), was working as Radio Wirer in Hindustan Aeronautics Limited, a Government of India Undertaking. While so, a charge was framed against her, alleging that there was shortage of 2347 Transistor pieces, and that she is responsible for the said loss, and accordingly, it constituted misconduct under the Standing Orders. The workman denied the said charge. Thereafter, an enquiry was conducted and ultimately, she was found guilty of the charge leveled against her. The Management imposed a punishment of removal from service, on 23-1-1982. Aggrieved thereby, she raised an Industrial Dispute before the Tribunal, and the same was taken as I.D.No.6 of 1993. The 1st respondent, proceeded on the basis that the enquiry conducted was valid, however, with regard to the punishment, the Labour Court held that the award of removal from

service, is not proportionate to the gravity of charge and therefore, the respondent No.2-workman was directed to be reinstated into service without back wages. In view of the said award, the appellant and also the respondent No.2 herein filed separate writ petitions. Through order dated 17-2-2005, a learned Judge of this Court dismissed the writ petitions, observing as under:-

> "Granting of back wages is a discretionary relief, which vests with the Tribunal and taking the cumulative effect of the situation, the Tribunal was of the opinion that the back wages should not be granted, and such an exercise of discretionary power cannot be interfered with by this Court unless the same was perverse or contrary to law. Under those circumstances, I find that refusing back wages cannot be said to be either arbitrary or illegal."

The learned Single Judge of this Court, after hearing the submissions made on either side, found that the said order does not call for any interference. This appeal is filed by the appellant-management alone, as against the dismissal of their writ petitions.

No appeal is preferred by the respondent No.2-workman as against the dismissal of the writ petitions.

The main submissions made on behalf of the appellant is that apart from the main charge of theft, on which the respondent No.2 was removed from service, and especially in view of the loss of confidence, the question of her reinstatement does not arise. We have perused the material on record. Though, the said plea was raised before the Tribunal, it was not accepted. However, the same plea was raised before the learned single Judge, mainly on the ground that no evidence had been adduced in support of such a plea of loss of confidence.

An attempt was also made before this Court to sustain the argument made on behalf of the Management, by referring to various principles laid down by the Apex Court in several judgments to the effect that the plea of loss of confidence, is available to the management.

Having heard the learned counsel and having perused the material available on record, and since no serious attempt has been made at both the levels i.e., before the Tribunal or before the learned single Judge to sustain the said plea of loss of confidence, this Court is not convinced to hold that the impugned order is illegal. We do not find any merit in the writ appeal and the same is accordingly dismissed. There shall be no order as to costs.

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(B.PRAKSH RAO, J)

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(D. APPA RAO, J)

Dated 2nd March, 2006.

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